

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James A. Simon,

Case No. 0:16-cv-704-ADM-KMM

Plaintiff,

v.

ORDER

Federal Bureau of Prisons,

Defendant.

James A. Simon, 1922 Simon Road, Huntertown, IN 46748, pro se

Bahram Samie, Esq., Assistant United States Attorney, counsel for defendant

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Katherine Menendez dated August 29, 2016. No objections have been filed to that Report and Recommendation in the time period permitted.¹ Based on the Report and Recommendation of the Magistrate Judge, on all of the files, records, and proceedings herein, the Court now makes and enters the following Order.

IT IS HEREBY ORDERED that:

1. The BOP's motion to dismiss for lack of jurisdiction (ECF No. 16) is **GRANTED** because Plaintiff's claim that the BOP failed to comply with 5 U.S.C. § 552(a)(6)(A) is moot.
2. Plaintiff's request for recovery of attorney's fees is **DENIED** because he is not eligible to recover fees as a pro se litigant.

¹ On August 29, 2016, the same day as the Report and Recommendation was issued, Plaintiff served a second response [Docket No. 33] to the Defendant's motion to dismiss. See Certificate Service [Docket No. 34]. The response does not change the result reached in the Report and Recommendation.

3. Plaintiff's request for recovery of costs is **DENIED**. Plaintiff is not eligible to recover costs because he has not "substantially prevailed" within the meaning of 5 U.S.C. § 552(a)(4)(E).

4. This action is **DISMISSED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: September 20, 2016

s/Ann D. Montgomery
Ann D. Montgomery
United States District Judge